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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE VALDEZ,

Defendant and Appellant.

E066661

(Super.Ct.No. FVA025450)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Correen Ferrentino, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. PROCEDURAL HISTORY**

On November 24, 2009, defendant and appellant Jesse Valdez pled guilty to felony grand theft under Penal Code section 487, subdivision (a). Defendant also admitted the truth of two strike priors within the meaning of Penal Code section 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i). The trial court sentenced defendant to a total of 25 years to life in prison.

On September 24, 2014, defendant filed a petition to recall his sentence pursuant to Penal Code section 1170.126. The People opposed the petition and the trial court held a contested suitability hearing. On May 19, 2016, the trial court denied the petition finding that defendant posed an unreasonable risk to public safety.

On May 19, 2016, defendant filed a notice of appeal. On November 17, 2016, we granted defendant's request to take judicial notice of the record in case No. E055739.

### **B. FACTUAL HISTORY**

During the contested suitability hearing pursuant to Penal Code section 1170.126, the People chose to proceed on documentary evidence and offered no witness testimony. The People admitted several documents into evidence, including defendant's prison "C-file," "RAP sheet," and, over defense objection, the police reports from defendant's latest arrest.

The police reports alleged that, on June 20, 2011, a male, later identified as defendant, with a clipboard and acting like a representative from the gas company, arrived at the home of the victim. Defendant indicated that he needed to check the

victim's oven and heater. Defendant entered the victim's home. After a short while, he asked the victim to tell him where she had a safe. He also said, "We have your granddaughter, Lauren." The victim had a granddaughter named Lauren; she was 15 years old.

Defendant then went into the victim's bedroom and again asked about the location of the safe. The victim retrieved a key to the safe from her jewelry box and opened the safe; it was empty. Defendant produced a handgun and pointed it at the victim; she gave him \$100 from a filing cabinet in her bedroom. Defendant asked for the victim's debit card and PIN; the victim complied.

While the victim was in her bedroom, a woman entered the room. The woman saw the jewelry box and began taking the victim's jewelry. Defendant then asked for the victim's purse. He opened it and took \$40 from her wallet.

After the documents were admitted, the trial court took judicial notice of a prior appellate court opinion in superior court case numbers "FVA 025450, 024228, and 024860." The opinion noted that, after an evidentiary finding, the trial court found that defendant was involved in a 2011 home invasion robbery and the victim of that robbery identified defendant in court.

Cindy Juarez testified on behalf of defendant; she is defendant's fiancée. She has maintained contact with defendant during his incarceration, speaking to him on a daily basis. She is "aware of the fact that [defendant] is engaged in and has been engaged in drug treatment" while incarcerated. Juarez is employed and lives in Perris, California. If

defendant were to be released, he would live in her home. Juarez testified that she would “support him in staying clean.”

After hearing from both the People and defendant, the trial court denied defendant’s Penal Code section 1170.126 petition. The court found the evidence indicated defendant was still involved in violent crimes, thus posed an unreasonable risk of danger to the public. The court relied heavily on the information surrounding the 2011 armed home invasion robbery, and that this robbery occurred while defendant was pending a potential indeterminate life sentence. The court stated: “It’s hard to imagine someone doing something much more violent and destructive, other than killing someone, to demonstrate that they are still involved in the gang life, still involved in committing violent crimes when there’s the opportunity to do so. And that was five years ago. [¶] So I think that when you add the new offense into the mix with the prior history and add in the fact that the new offense was committed while he was facing a 25-year-to-life sentence and was given a second opportunity—I can’t imagine a stronger incentive, not to become involved in any other offense, let alone a sexual violent offense. [¶] So I think if you look at the totality of those circumstances, it definitely demonstrates that the defendant still currently does pose an unreasonable risk of dangerousness to the community. [¶] And so for those reasons, the petition for resentencing is denied.”

## **DISCUSSION**

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of

the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

### **DISPOSITION**

The trial court properly denied defendant's petition for resentencing. The trial court's order is affirmed.

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MILLER

Acting P. J.

We concur:

CODRINGTON

J.

SLOUGH

J.